

B. Remarks

1. Status of the Application

Claims 1-27 are pending in the application, of which claims 1, 8, and 22 are independent claims. The examiner has rejected claims 1-7 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The examiner has rejected claims 1 and 8 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The examiner has rejected all of the claims under 35 U.S.C. § 103(a) being unpatentable over United States Patent No. 6,047,259 ("Campbell) in view of United States Publication No. US 2002/0022975 A1 ("Blasingame").

Applicant hereby cancels claims 3, 23, and 26, amends claims 1-2, 4, 6, 8, 22, 24-25, and 27, and submits that the claims, as amended, recite allowable subject matter. Accordingly, Applicant requests reconsideration and withdrawal of the foregoing rejections.

2. Amended Claim 1 and Its Dependent Claims Recite Statutory Subject Matter.

The examiner has rejected pending claim 1 as being directed to non-statutory subject matter on the ground that the method recited in claim 1 does not include a particular machine or transform the data identifying the patient. Applicant hereby amends claim 1 to recite:

A method for facilitating the evaluation, diagnosis and treatment of a patient suspected of having a medical disorder, comprising:

determining attributes of the patient and making a preliminary diagnosis based on the attributes that a patient has a particular medical disorder;

providing a template including information about the particular medical disorder and at least one field for recording data corresponding to the attributes of the patient;

comparing the attributes of the patient to the information on the template about the particular medical disorder;

marking the template to indicate information on the template about the particular medical disorder that matches an attribute of the patient;

recording data identifying the patient; and

simultaneously displaying on the template the information about the particular medical disorder, the matching indicia and the patient data;

wherein the step of determining is performed before the steps of providing, comparing, marking, and displaying.

Claim 1, so amended, expressly recites a method involving the use of a particular apparatus, namely, a template (and claims 4-6 expressly recite specific embodiments of the template). As such, claim 1 recites statutory subject matter. Claims 2-7 which depend from claim 1 similarly recite methods involving the use of a particular apparatus and, therefore, also recite statutory subject matter. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this ground for rejection.

3. Amended Claim 1 Is Definite.

The examiner has rejected pending claim 1 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention on the ground that the phrase “simultaneously displaying the selected information” is vague and indefinite because it is unclear how the information is simultaneously displayed. Applicant hereby amends the foregoing phrase of claim 1 to recite “simultaneously displaying on the template the information, matching indicia and patient data” making clear that the information, matching indicia and patient data are simultaneously displayed on the template. Applicant submits that the foregoing amended phrase is definite. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this ground for rejection.

4. Amended Claim 1 And Its Dependent
Claims Distinguish Over Campbell And Burlingame.

The examiner has rejected pending claim 1 as being unpatentable over Campbell in view of Burlingame on the ground that Campbell purportedly teaches all of the steps of claim 1 except the step of selecting a source of information about a particular medical disorder and recording data identifying the patient, that Blasingame purportedly teaches the foregoing subject matter not taught by Campbell, and that it purportedly would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Campbell and Blasingame to yield the invention set forth in claim 1. Among other things, the examiner contends that Campbell, at col. 7, ll. 35-41, teaches the step of “determining attributes of the patient and making a preliminary diagnosis based on the attributes that a patient has a particular medical disorder.” Office Action at 3.

Applicant disagrees with the examiner’s assessment of Campbell and the use of Campbell as a reference under 35 U.S.C. § 103(a) for at least the reasons set forth in the response to the previous Office Action. In particular, Applicant disagrees with the examiner’s assessment that Campbell teaches the step of “determining attributes of the patient and making a preliminary diagnosis based on the attributes that a patient has a particular medical disorder.” Indeed, Campbell expressly denigrates and, therefore, teaches away from, the practice of making a preliminary diagnosis as recited in claim 1, both as pending and as amended. In this regard, Campbell states:

Some software programs used to diagnose medical problems start with the physician making a tentative diagnosis, and then proceed to collect medical observations which support, or clarify the tentative diagnosis. This can lead to inaccurate conclusions since the medical exam is likely to be biased by the original diagnosis.

Campbell at col. 1, ll. 27-32. Because Campbell expressly teaches away from the step of “making a preliminary diagnosis based on the attributes that a patient has a particular medical disorder,” Campbell cannot be relied on, either alone or in combination with any other reference, to support a rejection of claim 1 under 35 U.S.C. § 103(a).

Citing *In re Garlock*, 721 F.2d 1540 (Fed. Cir. 1983), the examiner appears to suggest that Campbell nonetheless is a proper reference based on the teachings of another portion thereof. The examiner’s reliance on *Garlock* is misplaced. In *Garlock*, the district court held claims of a patent invalid as obvious. On appeal, the Federal Circuit held that the district court erred as a matter of law because the district court disregarded disclosures in the references it relied on that diverged and taught away from the invention at issue. As such, *Garlock* fully supports Applicant’s foregoing argument and undermines the examiner’s argument to the contrary.

Notwithstanding, Applicant hereby amends claim 1 to expressly recite that the step of “making a preliminary diagnosis based on the attributes that a patient has a particular medical disorder” is performed before the steps of providing, marking, comparing and displaying. So amended, claim 1 further distinguishes over Campbell and Burlingame. Indeed, to the extent Campbell could be construed to teach determining a preliminary diagnosis as recited in claim 1, which Applicant submits Campbell does not, Campbell does not teach doing so before performing the steps of

providing a template including information about the particular medical disorder and at least one field for recording data corresponding to the attributes of the patient;

comparing the attributes of the patient to the information on the template;

marking the template to indicate that the information matches or does not match an attribute of the patient; and

simultaneously displaying on the template the information, matching indicia and patient data.

Instead, Campbell teaches a system for conducting an interactive examination whereby the system provides a rule-out list of possible diagnoses generated by the system based on patient data, after the patient data has been provided to the system. This is directly contrary to the subject matter of claim 1. As such, Applicant submits that claim 1 is allowable over the foregoing references and that claims 2-7, which depend from claim 1, are allowable as well. Accordingly, Applicant requests reconsideration and withdrawal of the foregoing ground for rejection of these claims.

6. Claim 8 Is Definite.

The examiner has rejected pending claim 8 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention on the ground that the phrase “simultaneously displaying the selected information” is vague and indefinite because it is unclear how the information is simultaneously displayed. Applicant respectfully traverses this ground for rejection and submits that claim 8, as pending and as amended, expressly recites “simultaneously displaying the retrieved information and the patient data on the display” (emphasis added). Claim 8 further recites that the display is a portion of computer system. Applicant submits that the foregoing phrase is definite. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this ground for rejection.

7. Amended Claim 8 And Its Dependent Claims Distinguish Over Campbell And Burlingame.

The examiner has rejected claim 8 as being unpatentable over Campbell in view of Blasingame for reasons similar to those set forth in connection with claim 1. Applicant traverses

this ground for rejection for reasons similar to those set forth in connection with claim 1 but nevertheless amends claim 8 to further distinguish over these references. Claim 8, as amended, recites:

A method for managing patient medical information using a computer system having data storage means and a display, the method comprising:

- retaining in the storage means a database of information related to medical conditions;
- making a preliminary diagnosis that a patient is afflicted with a particular one of said medical conditions;
- retrieving from the database information relating to said particular one of said medical conditions;
- entering patient data into the storage means; and
- simultaneously displaying the retrieved information and the patient data on the display;

wherein the step of making a preliminary diagnosis is performed before the steps of retrieving and entering.

To the extent Campbell could be construed to teach determining a preliminary diagnosis as that term is used in claim 1, which Applicant submits would be incorrect, Campbell does not teach doing so before performing the steps of "retrieving from the database information relating to said particular one of said medical conditions" and "entering patient data into the storage means." Indeed, Campbell teaches away from this subject matter.

In view of the above, Applicant submits that amended claim 8 is allowable over the cited references and that claims 9-21, which depend from claim 8, are allowable as well. Accordingly, Applicant requests reconsideration and withdrawal of the rejections of these claims.

8. Amended Claim 22 And Its Dependent Claims Distinguish Over Campbell And Burlingame.

The examiner has rejected claim 22 as being unpatentable over Campbell in view of Blasingame. Applicant hereby amends Claim 22 to recite:

A system for use in connection with providing health care to a patient suspected of having a medical disorder, comprising:

a plurality of printed templates, each of the templates populated with:

information on signs and/or symptoms associated with a corresponding medical disorder;

information on tests that could be used to determine the presence or severity of the medical disorder;

information on treatments that could be administered to treat the medical disorder; and

at least one field for entry of patient data;

wherein each of said templates is adapted for annotation by a user to indicate:

the user's observation that the patient exhibits one or more of the signs and/or symptoms associated with the corresponding medical disorder;

the user's opinion that one or more of the tests should be conducted to confirm that the patient is afflicted by the corresponding medical disorder; and

the user's opinion that one or more of the treatments should be administered to treat the patient; and

wherein at least one of the templates is directed to a medical disorder other than the medical disorder the patient is suspected of having.

Applicant submits that neither Campbell nor Burlingame teach or suggest a system for use in providing health care to a patient suspected of having a medical disorder, including a set of printed templates, each template populated with information directed to a corresponding medical disorder, wherein at least one of the templates is directed to a medical disorder other than the medical disorder the patient is suspected of having as recited in amended claim 22. Instead, both Campbell and Burlingame are directed to software-based systems that do not contemplate a set of printed templates as recited in amended claim 22, particularly a set of printed templates

including at least one template that is directed to a medical disorder other than the medical disorder the patient is suspected of having.

In view of the above, Applicant submits that claim 22 is allowable over the cited references and that claims 24-25 and 27, which depend from claim 22, are allowable as well. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections of these claims.

9. Conclusion

Applicant submits that the application is in condition for allowance and requests reconsideration and withdrawal of the pending rejections and objections.

Respectfully submitted,



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